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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/828,005	03/27/1997	GARY DEAN LAVON	6563	4421

27752 7590 01/15/2003

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EXAMINER

REICHLE, KARIN M

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 01/15/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

08/828,005

Applicant(s)

LAVON ET AL

Examiner

Karin M. Reichle

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 October 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11, 12, 17, 20, 32, 33, 37-39, 43, 44 and 82-89 is/are pending in the application.
- 4a) Of the above claim(s) 20, 32, 38, 39, 82, 84 and 87-89 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11, 12, 17, 33, 37, 43, 44, 83, 85 and 86 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 March 1997 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 01 September 2000 is: a) ☒ approved b) ☒ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☒ Other: Copy of PTO-892

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1. Applicant's election with traverse of the species of Figures 9-10, the one acquisition layer composition of fibrous nonwoven materials, the one acquisition/distribution layer composition of fibrous nonwoven webs, the one second absorbent core composition material of absorbent gelling materials, the one third absorbent core component material of absorbent gelling materials and the one storage/distribution layer composition of open celled polymeric foam materials in Paper No. 35 is acknowledged. The traversal is on the ground(s) that examining all the claims would not present an undue burden. This is not found persuasive because the election of species requirement is based on patentable distinctness between the species and Applicant provided no argument to the contrary, i.e. that they are not patentably distinct.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 20, 32, 38-39, 82, 84 and 87-89 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 35.

In addition to generic claims 11 and 33, claims 12, 17, 37, 43-44, 83 and 85-86 are deemed to read on the elected species. The withdrawn claims are directed to compositions not elected, i.e. not directed to the one composition elected with respect to each layer as set forth supra, but rather are directed to other compositions, e.g. the one composition of the combination of nonwoven fibers and gelling materials in claim 32.

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3. Applicant's remarks on page 1, line 1-page 5, last line of the 10-23-02 response have either been addressed supra or will be addressed in more detail infra. As to the Marcus reference, U.S. Patent No. 2,688,328, such was listed on the PTO-892 of the 8-24-98 Office Action, Paper No. 9. A copy of such PTO-892 is enclosed with this action.

4. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

For example:

5. The abstract of the disclosure is objected to because, due to changes to the rules effective 11-00, the abstract is now too long for printing purposes, i.e. should be between 50 and 150 words in length. Also legal terminology and terminology which can be inferred, i.e. "The present invention relates to", "of the present invention", "In the preferred embodiment", should be avoided. Correction is required. See MPEP § 608.01(b).

6. The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on 9-01-00 have been approved in part. A proper drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The correction to the drawings will not be held in abeyance.

Figures 10, 14 and 15 have been approved. Proposed Figures 3, 5 and 7 have not been approved because the changes to Figure 3 do not overcome the objection, the changes to Figure 5

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have already been approved, i.e. it is a duplication, and Figure 7, as proposed, is not consistent with the prior Figure 7 except for the proposed changes.

7. The formal drawings filed 9-01-00 have been placed in the file but approval is held in abeyance until a complete set of corrected formal drawings showing all the proposed and approved corrections is of record.

8. The drawings are objected to because Figure 15 is not consistent with the description at page 27, lines 11-17. Figures 3-8 use the same numerals as those used in Figures 1-2 but the structure denoted by such has been described as not being the same. For example, the structure shown as 60 in Figure 1 and that shown as 60 in Figure 3 is not the same, e.g. the structure shown in each further embodiment of what is shown in the Figures of 1 and 2 could include numerals with an extra prime mark for each embodiment, e.g. 60, 60', 60", etc. In Figures 7-8 and 10, even Figure 10 as proposed 9-01-00 and approved, the numeral 55 is used to denote three different structures. The numeral 55 should be used to consistently denote only one structure. In Figure 8 the periphery 57 should be denoted. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

9. The disclosure is objected to because of the following informalities: The Summary of the Invention section, i.e. a description of the claimed invention, and the invention of the claims should be commensurate in scope, see MPEP 608.01(d) and 1302.01. For example, there is no disposabilty set forth in the Summary but it is claimed and the Summary sets forth the first core

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component as being nonremovable which is not in the claims. The written description should also be consistent with the Figures, see drawing objections supra. Also Applicant has added a definition of "disposable" to the specification. While such definition would be obvious to one skilled in the art, it is unclear how such definition applies to the invention disclosed in the instant application because while such invention is not intended to be laundered it can be reused because of the removal and/or replacement of the core components. Therefore what constitutes a single use of the instant invention is unclear, i.e. is it when the article is removed from the user for the first time? Is it when the nonremovable first core component is saturated? It is noted that the claims no longer require the nonremoval of the first core component. A clear description of what constitutes a single use with regard to the specific structures of the instant invention should be set forth.

Appropriate correction is required.

10. Claims 11-12, 17, 33, 37, 43-44, 83 and 85-86 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 11, is the component on lines 1-2 and that on lines 8-9 one and the same, i.e how many removable components at a minimum are being claimed?

11. The following comments or observations are made with regard to the claim language: It is noted that the "means for" language on lines 11-14 of claim 11 and lines 3-6 of claim 33 does not invoke 35 USC 112, sixth paragraph because such is modified by sufficient structure, material,

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or acts for achieving the specified function on lines 14 et seq and 6 et seq of the respective claims. It is further noted that the first core component is not limited to a single acquisition layer and a single acquisition/distribution layer and that the acquisition layer is not limited to only an acquisition function, i.e. could be another acquisition/distribution layer. Nor are the layers of the first core required to be in a specific sequence. It is also noted that the second and third core components are not limited to a single layer or specific sequence either. It is also noted that the components as claimed are not required to be different inserts but could be parts of the same insert or different inserts. The claims set forth removable second and third core components and as claimed the first component could or could not be removable. (In light of the specification at, for example, page 3, lines 13-26, the limitations of nonremoval or removal must be interpreted as function, i.e. it is a capability rather than a structural limitation since removal is determined by the user who can or cannot remove as desired but there is no structure which prevents removal.) It is noted that the components are not limited to the crotch, first waist region or second waist region respectively, i.e. each component could extend from waist region to waist region. It is noted that the removal of the various components is not limited to the specified access means, e.g. the second component could be removed through the second access means.

12. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

13. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was

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commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103© and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

14. Claims 11-12, 17, 33, 37, 43-44, 83 and 85-86 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lewis in view of Lopez et al, Allen, Murphy, Schiff, Marcus and Dyer '207.

See Figures and page 2, lines 26-91 of Lewis. It is noted that Lewis does not set forth whether the sheets 6 and 7 and the pad component 12 are disposable, reuseable or both. Also Lewis does not show nor disclose that the ply components of the pad component are fastened together. Also Lewis does not set forth when the pad component 12 is placed in and removed from the sheets 6 and 7. See discussion of claim language supra. In regard to claim 11, the Lewis device clearly includes all the claimed structure and function except for 1) the capability of disposal, 2) the capability of removal of an absorbent component without removal of the article, 3) a reclosable flap and fastener, and 4) the first core component including an acquisition and an acquisition /distribution layer. With regard to 1), see discussion of Lewis supra. Also see Lopez, e.g. Figures, page 1, lines 4-7, 9-14, page 4, lines 8-15 and 30 et seq, page 7, lines 11-13, page 11, lines 6-8, and Allen, e.g. col. 1, lines 15-66, col. 5, lines 13-23 and col. 6, lines 40-43. To make the Lewis device of disposable materials, if not already, would be obvious to one of

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ordinary skill in the art in view of the recognition that such would be more convenient and efficient as taught by Lopez and the desirability of convenience by Lewis, or in view of the interchangeability as taught by Allen. With regard to 2), see cited portions of Lopez. Also see Murphy, Figures, lines 3-13 and 75-88. To employ the opening of Lewis to not only allow placement of multiple ply components or pad components therein but also to allow the removal of the ply components or pad components therefrom without removal of the article as taught by Lopez and Murphy would be obvious to one of ordinary skill in the art in view of the recognition that such a capability would allow extended use of the device, i.e. more economically efficient, i.e. more economically convenient, and more convenient to use, and the desirability of convenience by Lewis. With regard to 3), see Schiff, e.g., Figure, col. 1, lines 10-18 and Marcus, Figures. To employ a reclosable flap and fastener in combination with a backsheet discontinuity as taught by Schiff and Marcus on the Lewis device would be obvious to one of ordinary skill in the art in view of the recognition that such would better prevent the escape of body fluids and the desirability to better contain body fluids in any absorbent article. With regard to 4), see Dyer '207, Figure 5 and col. 29, line 4-col. 31, last line and thus, Young et al, '554, a continuation of '345, col. 1, lines 25-29 and col. 2, lines 32-62, col. 34, line 48-col. 35, line 20, i.e absorbent structures of multiple acquisition/distribution layers and a storage/distribution layer are known for having improved efficiency in handling fluids and being cost effective due to more effective utilization of absorbent materials. Note again col. 1, lines 15-66 of Allen. Therefore to employ the absorbent core structure as taught by Dyer for the ply components or pad components of Lewis would be

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obvious to one of ordinary skill in the art in view of the recognition that such would provide cost efficient fluid absorbency and the desirability of such in any absorbent article.

In regard to claims 12, 17, 83, 85 and 86, see discussion of claim 11 and, e.g. col. 29, lines 59-68, col. 30, lines 22-59, and col. 3, lines 54-61 of Dyer

In regard to claim 43, see discussion of claim 11 and cited portions of prior art.

In regard to claims 33, 37 and 44, see discussion supra. Applicant claims another backsheet discontinuity in a waist region opposite the first discontinuity, another reclosable flap and another fastener, i.e. access in similar fashion at another location as well, which Lewis does not clearly teach. However, see portions of Lewis cited supra as well as the cited portions of Lopez, Allen and Murphy, supra, i.e. the prior art shows that access can be provided at one location or at two opposite locations in a similar fashion and that access can be provided in a layer, i.e. in the front or back, in the inner layer or outer layer, or between layers. To employ access in a similar fashion at both ends of Lewis as taught by Lopez, Allen and Murphy would be obvious to one of ordinary skill in the art in view of the recognition that such would allow access from either end and thus, be more versatile, i.e. more convenient, and the desirability of convenience by Lewis.

The device as taught by the prior art combination would necessarily and inevitably permit the placement, removal and replacement of any ply component or pad component through any access.

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15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The other prior art teaches inserts or makes of record patents issued from applications cited by Applicants.

16. Applicants remarks on pages 4-9 of the 9-01-00 response with regard to the informalities have been considered but are either deemed moot in that they have not been reraised or are deemed nonpersuasive for the reason set forth supra. Applicants remarks on pages 9-12 have been considered but are deemed moot in that such prior art combinations/rejections have not been repeated. Applicants remarks on pages 13-15 have been considered but are deemed nonpersuasive for the reasons set forth in the prior art rejection supra.

17. Any inquiry concerning this communication should be directed to K. M. Reichle at telephone number 703-308-2617. The Examiner's regular work schedule is Monday-Thursday.

KMR

January 9, 2003

K. M. Reichle
KARIN REICHEL
PATENT EXAMINER